

<sup>1</sup> Appellant submitted a timely request for oral argument before the Board. 20 C.F.R. § 501.5(b). Pursuant to the Board's *Rules of Procedure*, oral argument may be held in the discretion of the Board. 20 C.F.R. § 501.5(a). The Board, in exercising its discretion, denies appellant's request for oral argument because the arguments on appeal can adequately be addressed in a decision based on a review of the case record. Oral argument in this appeal would further delay issuance of a Board decision and not serve a useful purpose. As such, the oral argument request is denied and this decision is based on the case record as submitted to the Board.

final after 30 days of issuance and is not subject to further review.<sup>2</sup> The most recent merit decision in OWCP File No. xxxxxx170 was an OWCP decision dated February 25, 2016.<sup>3</sup> As there is no merit decision by OWCP issued within 180 days of the filing of this appeal, pursuant to the Federal Employees' Compensation Act<sup>4</sup> (FECA) and 20 C.F.R. §§ 501.2(c) and 501.3, the Board lacks jurisdiction over the merits of this case.<sup>5</sup>

### **ISSUE**

The issue is whether OWCP properly denied appellant's March 20 and June 18, 2019 requests for reconsideration, finding that they were untimely filed and failed to demonstrate clear evidence of error.

### **FACTUAL HISTORY**

This case has previously been before the Board.<sup>6</sup> The facts and circumstances as presented in the Board's prior decisions are incorporated herein by reference. The relevant facts are as follows.

On June 5, 1979 appellant, then a 26-year-old clerk, filed a traumatic injury claim (Form CA-1) alleging that he slipped on a rubber band and struck his head on a mail tray while in the performance of duty. He stopped work on June 5, 1979 and received continuation of pay through July 20, 1979. Appellant filed a claim for wage-loss compensation (Form CA-7) for temporary total disability beginning July 20, 1979. By decision dated January 31, 1980, OWCP accepted his traumatic injury claim for scalp contusion, but found that the June 5, 1979 employment injury did not result in disability from work or a loss of wage-earning capacity. Consequently, it denied

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<sup>2</sup> 20 C.F.R. § 501.6(d); *P.S.*, Docket No. 18-0718 (issued October 26, 2018); *T.B.*, Docket No. 15-0001 (issued July 1, 2015).

<sup>3</sup> On May 7, 2020 and July 29, 2019 OWCP issued additional decisions denying appellant's April 2, 2020 and June 27, 2019 requests for reconsideration as the requests were untimely filed and failed to demonstrate clear evidence of error. As these decisions were issued after appellant's appeal to the Board on July 16, 2019 and concern his claim under OWCP File No. xxxxxx170, the Board will not address these decisions on appeal. *But see Douglas E. Billings*, 41 ECAB 880 (1990) (the Board and OWCP may not have simultaneous jurisdiction over the same issue); 20 C.F.R. § 501.2(c)(3).

<sup>4</sup> 5 U.S.C. § 8101 *et seq.*

<sup>5</sup> The Board notes that following the June 27, 2019 decision, OWCP received additional evidence. However, the Board's *Rules of Procedure* provides: "The Board's review of a case is limited to the evidence in the case record that was before OWCP at the time of its final decision. Evidence not before OWCP will not be considered by the Board for the first time on appeal." 20 C.F.R. § 501.2(c)(1). Thus, the Board is precluded from reviewing this additional evidence for the first time on appeal. *Id.*

<sup>6</sup> Docket No. 19-0538 (issued February 27, 2019); Docket No. 17-0746 (issued October 26, 2017); Docket No. 16-0052 (issued October 6, 2017); Docket No. 13-0719 (issued April 17, 2014); Docket No. 11-1689 (issued May 22, 2012); Docket No. 06-1915 (issued January 22, 2007); Docket No. 89-1581 (issued July 19, 1990); Docket No. 81-1454 (issued October 13, 1981).

appellant's claim for wage-loss compensation. In an August 7, 1980 decision, an OWCP hearing representative affirmed the January 31, 1980 decision.

On November 11, 1980 appellant filed a notice of recurrence of disability (Form CA-2a) beginning March 29, 1980.<sup>7</sup>

On December 10, 1986 appellant filed an occupational disease claim (Form CA-2) for right arm tendinitis. He indicated that he first became aware of his condition in December 1978, and that it was not until August 1986 that he first realized his condition was caused or aggravated by his federal employment. OWCP determined that appellant's December 10, 1986 claim was untimely filed pursuant to 5 U.S.C. § 8122. The record revealed that as of May 21, 1980 appellant knew or should have known of the relationship between his claimed right arm condition and his federal employment. OWCP further found that there was insufficient evidence to establish that the employing establishment received timely notification of appellant's claimed right arm condition, that might otherwise excuse his failure to file his claim within the three-year time frame imposed by 5 U.S.C. § 8122. In its July 19, 1990 merit decision, the Board affirmed OWCP's determination that appellant's claim was untimely pursuant to 5 U.S.C. § 8122.<sup>8</sup>

By decision dated June 9, 1981, OWCP denied reconsideration of the January 31, 1980 decision in OWCP File No. xxxxxx170. In an October 13, 1981 decision, the Board affirmed the June 9, 1981 decision.<sup>9</sup>

By decision dated January 22, 2007, the Board affirmed OWCP's January 13 and March 20, 2006 nonmerit decisions denying reconsideration in OWCP File No. xxxxxx367, finding that appellant's requests were untimely filed and failed to demonstrate clear evidence of error on the part of OWCP.<sup>10</sup>

In 2010 appellant submitted several requests for reconsideration and/or hearing requests before representatives of OWCP's Branch of Hearings and Review in OWCP File No. xxxxxx170. In this regard, on November 29, 2010 a hearing representative informed appellant that his case was not in posture for review given that the Board had already upheld OWCP's prior determinations. In a March 1, 2011 decision, OWCP's hearing representative found that appellant's October 20, 2010 request for review of the written record was untimely filed. He advised appellant to notify the district office if he had additional evidence establishing a causal relationship between his condition and the June 5, 1979 employment injury.

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<sup>7</sup> The Form CA-2a noted that upon returning to work after the June 5, 1979 employment injury, appellant experienced severe headaches, and neck and upper back pain. He alleged that he also could not work around noise or operate a letter sorting machine (LSM) because of repetitive motion. The Form CA-2a further noted that appellant had been working on the hand stamp table and complained that prolonged standing and constant hand/arm usage caused unbearable pain. Additionally, prolonged sitting on rest bars and throwing mail aggravated appellant's injury.

<sup>8</sup> *Supra* note 5.

<sup>9</sup> *Id.*

<sup>10</sup> *Id.*

In a March 23, 2011 decision, OWCP denied appellant's February 10, 2011 request for reconsideration finding that the request was untimely filed and failed to demonstrate clear evidence of error on the part of OWCP in denying wage-loss compensation on or after July 20, 1979.

In a decision dated May 22, 2012, in OWCP File No. xxxxxx170, the Board affirmed the hearing representative's March 1, 2011 nonmerit decision, but set aside OWCP's March 23, 2011 decision denying reconsideration, finding that absent proper notification, the one-year limitation for filing a timely request for reconsideration did not apply to OWCP decisions issued prior to June 1, 1987. Accordingly, the Board remanded the case for further consideration of appellant's request for reconsideration.<sup>11</sup>

By decision dated July 16, 2012, OWCP denied modification of its prior decision denying appellant's claim for wage-loss compensation on or after July 20, 1979 due to his accepted June 5, 1979 scalp contusion in OWCP File No. xxxxxx170.

Appellant again requested reconsideration on September 24, 2012, which OWCP denied by decision dated December 18, 2012. In an April 17, 2014 decision, the Board affirmed OWCP's December 18, 2012 nonmerit decision denying reconsideration in OWCP File No. xxxxxx170.<sup>12</sup>

In an April 17, 2014 decision,<sup>13</sup> the Board affirmed OWCP's November 15, 2012 nonmerit decision which denied appellant's October 12, 2012 request for reconsideration as untimely filed and because he failed to demonstrate clear evidence of error with respect to the denial of his occupational disease claim as untimely filed (OWCP File No. xxxxxx367).

Appellant again requested reconsideration on December 26, 2014 in OWCP File No. xxxxxx170. OWCP issued a January 16, 2015 decision finding that his December 26, 2014 reconsideration request was untimely filed and failed to demonstrate clear evidence of error with respect to the July 16, 2012 merit decision.

On January 6, 2015 in OWCP File No. xxxxxx367, appellant again requested reconsideration and submitted various medical reports from 1980 and 1996 regarding his emotional state, as well as his right upper extremity. In a January 23, 2015 decision, OWCP again denied appellant's request as untimely filed and failing to demonstrate clear evidence of error with respect to his December 10, 1986 untimely occupational disease claim.

In a January 22, 2015 letter to OWCP, appellant noted that it had not yet formally adjudicated his November 11, 1980 recurrence claim. He also resubmitted a copy of the previously filed Form CA-2a.

In a February 10, 2015 development letter, OWCP advised that appellant's claim had been accepted for scalp contusion, and that it appeared he was claiming disability due to a consequential

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<sup>11</sup> *Id.*

<sup>12</sup> *Id.*

<sup>13</sup> *Id.*

conditions including severe headaches, and neck and upper back pain. It informed him of the legal, factual, and medical criteria for establishing a recurrence of disability. OWCP further advised that the then-current record was insufficient to establish appellant's claimed recurrence of disability beginning March 29, 1980. It afforded him at least 30 days to submit additional factual and medical evidence in support of his recurrence claim.

On March 7, 2015 appellant again requested reconsideration in OWCP File No. xxxxxx367. He reiterated an earlier argument that the employing establishment had notice of his right arm condition/tendinitis as early as December 13, 1979. Appellant argued that this information had been provided in connection with his accepted June 5, 1979 traumatic injury claim in OWCP File No. xxxxxx170.<sup>14</sup> He also referenced OWCP's December 17, 1987 merit decision which found that his claim was untimely filed pursuant to 5 U.S.C. § 8122.<sup>15</sup>

By decision dated March 31, 2015, OWCP denied appellant's recurrence claim in OWCP File No. xxxxxx170. It found that the evidence of record did not establish that the claimed severe headaches and neck and upper back pain were due to a worsening of his accepted work-related condition.

By decision dated April 16, 2015, OWCP denied appellant's request for reconsideration of his occupational disease claim in OWCP File No. xxxxxx367.

By letters dated April 23 and 29, 2015, appellant requested reconsideration under OWCP File No. xxxxxx367. In his April 29, 2015 letter, he argued that an April 3, 1980 form letter (2801-A) from C.L., his superior officer, indicated that C.L. had knowledge of appellant's right arm condition prior to his June 5, 1979 slip and fall injury. Appellant submitted a copy of C.L.'s form letter. He also resubmitted a June 12, 1979 letter from Dr. Thomas M. Stanley, a neurologist, who advised the employing establishment that he had been treating appellant for right forearm pain.

In a May 12, 2015 letter, appellant reiterated his contention that the employing establishment and OWCP were aware of his arm injury as early as May 1979.

By decision dated June 11, 2015, in OWCP File No. xxxxxx367, OWCP denied appellant's request for reconsideration, finding the request was untimely filed and failed to demonstrate clear evidence of error.

By letter dated July 21, 2015, appellant requested reconsideration under OWCP File No. xxxxxx367. He did not submit any additional evidence with his request.

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<sup>14</sup> The Board found this same argument unpersuasive in its April 17, 2014 decision. Docket No. 13-0719.

<sup>15</sup> OWCP's December 17, 1987 decision was part of the Board's July 19, 1990 merit review under Docket No. 89-1581.

By decision dated August 11, 2015, OWCP denied appellant's July 21, 2015 request for reconsideration, finding the request was untimely filed and failed to demonstrate clear evidence of error.

By letter dated August 28, 2015, appellant again requested reconsideration under OWCP File No. xxxxxx367. He did not submit any additional evidence with his request.

By decision dated September 14, 2015, OWCP denied appellant's August 28, 2015 request for reconsideration without a merit review, finding the request was untimely filed and failed to demonstrate clear evidence of error.

Appellant timely requested an oral hearing regarding the March 31, 2015 merit decision which addressed his alleged recurrence of disability before a representative of OWCP's Branch of Hearings and Review, which was held on December 15, 2015. His argument at the hearing pertained to whether the employing establishment and/or OWCP received timely notification of his right upper extremity condition under OWCP File No. xxxxxx367.

By decision dated February 25, 2016, an OWCP hearing representative affirmed the March 31, 2015 denial of recurrence decision.

On July 8, 2016 appellant requested reconsideration of the February 25, 2016 decision. He continued to argue that his carpal tunnel syndrome was employment related. Appellant did not submit additional evidence with his July 8, 2016 request for reconsideration.

In a July 20, 2016 decision, OWCP denied appellant's July 8, 2016 request for reconsideration.

On September 16, 2016 appellant requested reconsideration of the July 20, 2016 decision. In subsequent correspondence, he continued to argue that his right upper extremity pain, which dated back to May 1979, was employment related. Appellant explained that his pain was not psychogenic, as previously characterized, but rather due to nerve entrapment/carpal tunnel syndrome. He reiterated that OWCP should not have found his December 1986 upper extremity occupational disease claim untimely filed. Appellant did not submit additional evidence with his latest request for reconsideration.

By decision dated October 19, 2016, OWCP denied appellant's September 16, 2016 request for reconsideration as it did not meet the requirements for merit review.

In its October 6, 2017 decision,<sup>16</sup> the Board found that OWCP's June 11, August 11, and September 14, 2015 decisions in OWCP File No. xxxxxx367 properly denied appellant's requests for reconsideration as they were untimely filed and failed to demonstrate clear evidence of error.

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<sup>16</sup> *Id.*

In its October 26, 2017 decision, the Board found that on October 19, 2016 OWCP had properly denied appellant's request for reconsideration of the merits of his claim pursuant to 5 U.S.C. § 8128(a) in OWCP File No. xxxxxx170.<sup>17</sup>

On December 18, 2017 appellant resubmitted a February 27, 1996 report from Dr. Thomas M. Stanley, a Board-certified neurologist, initially submitted in 2011 in which he noted appellant's history of repetitive movements at the employing establishment as well as his abnormal biochemistry.<sup>18</sup>

On January 8, 18 and 22, 2018 appellant requested reconsideration. He contended that he was issued the wrong claim form in November 11, 1980 which was a clear error on the part of the employing establishment. Appellant again resubmitted the February 27, 1996 report from Dr. Stanley. He contended that the employing establishment had actual knowledge of his arm injury based on a May 7, 1979 report from Dr. Stanley included in OWCP File No. xxxxxx170. Appellant further asserted that the fact that the employing establishment forwarded Dr. Stanley's reports to OWCP established that it knew that his diagnosed conditions were job related. He also resubmitted an affidavit from A.G., a union shop steward, dated February 7, 1997 and originally submitted to OWCP on that date.

On February 28, 2018 appellant asserted that the employing establishment had timely notice of his job-related arm injury in May 1979. He provided a copy of *Franklin v. Burroughs Corporation*, U.S. District Court decision from the Southern District of Florida dated December 6, 1988 which noted that the employing establishment had conducted extensive tests with LSM and therefore should have had equal, if not superior knowledge of any potential dangers as the defendant, government contractor. Appellant contended that this decision established that the employing establishment knew that Dr. Stanley's diagnosis of radial nerve entrapment was related to the operation of the LSM.

In a March 19, 2018 narrative statement, appellant again contended that he was not provided the correct claim form, that the employing establishment did not read the May 20, 2018 hearing transcript, and that OWCP should have developed his claim to determine if psychogenic pain or carpal tunnel syndrome were employment related. He further contended that Dr. Stanley had not told him his arm condition was employment related and that it relied on his speculation as to when he was aware that the condition was employment related.

On May 18, 2018 appellant contended that it was improper to deny his claim because it was filed on an incorrect form, that OWCP failed to provide due process, and that he was entitled to schedule award compensation. He resubmitted a May 9, 1996 note from Dr. E. P. Bergeron, a physician, initially submitted in 2014.

By decision dated May 29, 2018, OWCP denied appellant's request for reconsideration.

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<sup>17</sup> *Supra* note 4.

<sup>18</sup> The Board reviewed this report in its October 26, 2017 decision. *Supra* note 5.

On June 25, 2018 appellant again requested reconsideration in OWCP File No. xxxxxx367. He repeated his contentions that OWCP had denied him due process, and that it was improper to deny a claim based on the filing of an incorrect claim form.

By decision dated July 6, 2018, OWCP declined to reopen appellant's claim for consideration of the merits finding that his request was untimely filed and failed to demonstrate clear evidence of error.

On March 20, 2019 appellant requested reconsideration. He asserted that OWCP had violated his constitutional right to due process, that Dr. Stanley's June 12, 1979 report supported causal relationship between his diagnosed radial nerve entrapment and his job duties, that OWCP was in the process of scheduling a second opinion examination, but stopped, and that OWCP should reopen his claim. Appellant resubmitted a statement regarding his claim for disability retirement dated April 3, 1980. He also resubmitted a May 14, 1979 report from Dr. Stanley originally submitted on May 14, 1979 in OWCP File No. xxxxxx170.

By decision dated June 14, 2019, OWCP declined to reopen appellant's request for reconsideration of the merits of his claim as it was untimely filed and failed to demonstrate clear evidence of error.

On June 18, 2019 appellant again requested reconsideration. He again contended that OWCP requested a response from the employing establishment and then stopped the process even though the employing establishment had not responded. Appellant provided an additional copy of a May 29, 1979 work release note from a physician whose signature is illegible, originally submitted on May 29, 1979 in OWCP File No. xxxxxx170.

By decision dated June 27, 2019, OWCP denied appellant's request for reconsideration of the merits of his claim, finding that it was untimely filed and failed to demonstrate clear evidence of error.

### **LEGAL PRECEDENT**

Pursuant to section 8128(a) of FECA, OWCP has the discretion to reopen a case for further merit review.<sup>19</sup> OWCP's regulations<sup>20</sup> establish a one-year time limitation for requesting reconsideration, which begins on the date of the original OWCP merit decision. A right to reconsideration within one-year also accompanies any subsequent merit decision on the issues.<sup>21</sup> Timeliness is determined by the document receipt date, the received date in OWCP's Integrated

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<sup>19</sup> 5 U.S.C. § 8128(a); *L.H.*, Docket No. 19-1174 (issued December 23, 2019); *Y.S.*, Docket No. 08-0440 (issued March 16, 2009).

<sup>20</sup> 20 C.F.R. § 10.607(a).

<sup>21</sup> *J.W.*, Docket No. 18-0703 (issued November 14, 2018); *Robert F. Stone*, 57 ECAB 292 (2005).



Federal Employees' Compensation System (iFECS).<sup>22</sup> Imposition of this one-year filing limitation does not constitute an abuse of discretion.<sup>23</sup>

When a request for reconsideration is untimely, OWCP undertakes a limited review to determine whether the application demonstrates clear evidence that OWCP's final merit decision was in error.<sup>24</sup> Its procedures provide that OWCP will reopen a claimant's case for merit review, notwithstanding the one-year filing limitation set forth in 20 C.F.R. § 10.607, if the claimant's request for reconsideration demonstrates clear evidence of error on the part of OWCP.<sup>25</sup> In this regard, OWCP will limit its focus to a review of how the newly submitted evidence bears on the prior evidence of record.<sup>26</sup>

To demonstrate clear evidence of error, a claimant must submit evidence relevant to the issue which was decided by OWCP.<sup>27</sup> The evidence must be positive, precise, and explicit and must manifest on its face that OWCP committed an error.<sup>28</sup> Evidence which does not raise a substantial question concerning the correctness of OWCP's decision is insufficient to demonstrate clear evidence of error.<sup>29</sup> It is not enough merely to demonstrate that the evidence could be construed so as to produce a contrary conclusion.<sup>30</sup> This entails a limited review by OWCP of how the evidence submitted with the reconsideration request bears on the evidence previously of record and whether the new evidence demonstrates clear error on the part of OWCP.<sup>31</sup> To demonstrate clear evidence of error, the evidence submitted must not only be of sufficient probative value to create a conflict in medical opinion or establish a clear procedural error, but must be of sufficient probative value to shift the weight of the evidence in favor of the claimant and raise a substantial question as to the correctness of OWCP's decision.<sup>32</sup> The Board makes an

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<sup>22</sup> Federal (FECA) Procedure Manual, Part 2 -- Claims, *Reconsiderations*, Chapter 2.1602.4(b) (February 2016).

<sup>23</sup> *S.T.*, Docket No. 18-0925 (issued June 11, 2019); *E.R.*, Docket No. 09-0599 (issued June 3, 2009); *Leon D. Faidley, Jr.*, 41 ECAB 104 (1989).

<sup>24</sup> *C.V.*, Docket No. 18-0751 (issued February 22, 2019); *B.W.*, Docket No. 10-0323 (issued September 2, 2010); *M.E.*, 58 ECAB 309 (2007); *Leon J. Modrowski*, 55 ECAB 196 (2004); *Thankamma Mathews*, 44 ECAB 765 (1993); *Jesus D. Sanchez*, 41 ECAB 964 (1990).

<sup>25</sup> *D.G.*, Docket No. 18-1038 (issued January 23, 2019); *Gladys Mercado*, 52 ECAB 255 (2001).

<sup>26</sup> *V.G.*, Docket No. 19-0038 (issued June 18, 2019); *E.P.*, Docket No. 18-0423 (issued September 11, 2018); *Nelson T. Thompson*, 43 ECAB 919 (1992).

<sup>27</sup> *S.T.*, *supra* note 23; *C.V.*, *supra* note 24; *Darletha Coleman*, 55 ECAB 143 (2003); *Dean D. Beets*, 43 ECAB 1153 (1992).

<sup>28</sup> *S.T.*, *supra* note 23; *E.P.*, *supra* note 26; *Pasquale C. D'Arco*, 54 ECAB 560 (2003); *Leona N. Travis*, 43 ECAB 227 (1991).

<sup>29</sup> *L.B.*, Docket No. 19-0635 (issued August 23, 2019); *V.G.*, *supra* note 26; *C.V.*, *supra* note 24; *Leon J. Modrowski*, *supra* note 24; *Jesus D. Sanchez*, *supra* note 24.

<sup>30</sup> *V.G.*, *supra* note 26; *E.P.*, *supra* note 26; *Leona N. Travis*, *supra* note 28.

<sup>31</sup> *L.B.*, *supra* note 29.

<sup>32</sup> *D.G.*, *supra* note 25; *Leon D. Faidley, Jr.*, *supra* note 23.

independent determination of whether a claimant has demonstrated clear evidence of error on the part of OWCP such that it abused its discretion in denying merit review in the face of such evidence.<sup>33</sup>

### ANALYSIS

The Board finds that OWCP properly denied appellant's March 20 and June 18, 2019 requests for reconsideration as they were untimely filed and failed to establish clear evidence of error.

The most recent merit decision addressing appellant's December 10, 1986 right arm tendinitis claim in OWCP File No. xxxxxx367 was the July 19, 1990 Board decision. Because OWCP received appellant's requests for reconsideration more than a year after the last merit decision issued on July 19, 1990, his requests were untimely filed and therefore, he must demonstrate clear evidence of error.

The Board further finds that appellant's requests for reconsideration failed to demonstrate clear evidence of error in the latest merit decision. Appellant's December 10, 1986 right arm claim was denied as it was untimely filed. In support of his March 20 and June 18, 2019 untimely requests for reconsideration, appellant submitted medical evidence which he believed established causal relationship between his diagnosed condition and his employment, alleged that OWCP denied him due process, and alleged that OWCP failed to adequately develop his occupational disease claim.

However, such evidence and argument is not relevant to the issue at hand, and does not support that the July 19, 1990 merit decision was incorrect at the time it was issued. This evidence does not raise a substantial question as to whether the July 19, 1990 decision was in error<sup>34</sup> as it is not positive, precise, and explicit in manifesting on its fact that OWCP committed an error<sup>35</sup> nor does it shift the weight of the evidence in appellant's favor.<sup>36</sup> Therefore, these documents are insufficient to establish clear evidence of error.<sup>37</sup>

Regarding appellant's due process claim, the United States Supreme Court has held that constitutional questions are unsuited to resolution in administrative hearing procedures. As the Board is an administrative body, it does not have jurisdiction to review a constitutional claim. The

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<sup>33</sup> *C.V.*, *supra* note 24; *George C. Vernon*, 54 ECAB 319 (2003); *Gregory Griffin*, 41 ECAB 186 (1989), *petition for recon. denied*, 41 ECAB 458 (1990).

<sup>34</sup> *M.P.*, Docket No. 17-0367 (issued March 12, 2018); *Leona N. Travis*, *supra* note 28.

<sup>35</sup> *R.C.*, Docket No. 17-0198 (issued January 28, 2019); *A.S.*, Docket No. 16-0902 (issued September 28, 2016).

<sup>36</sup> *Id.*

<sup>37</sup> *Woodruff v. U.S. Department of Labor*, 954 F.2d 634 (11th Cir. 1992); *C.D.*, Docket No. 17-1915 (issued February 21, 2018); *Andrew Fullman*, 57 ECAB 574 (2006).

federal courts retain jurisdiction over decisions under FECA where there is a charge of a violation of a clear statutory mandate or where there is a constitutional claim.<sup>38</sup>

Thus, the Board finds that the evidence submitted in support of the untimely requests for reconsideration is insufficient to shift the weight of the evidence in favor of appellant's claim or to raise a substantial question of error in the July 19, 1990 decision.<sup>39</sup> Accordingly, the Board finds that OWCP properly denied appellant's reconsideration requests, as they were untimely filed and failed to demonstrate clear evidence of error.

### **CONCLUSION**

The Board finds that OWCP, by its June 14 and 27, 2019 decisions, properly denied appellant's March 20 and June 18, 2019 requests for reconsideration, finding that they were untimely filed and failed to demonstrate clear evidence of error

### **ORDER**

**IT IS HEREBY ORDERED THAT** the June 27 and 14, 2019 decisions of the Office of Workers' Compensation Programs are affirmed.

Issued: April 22, 2021  
Washington, DC

Alec J. Koromilas, Chief Judge  
Employees' Compensation Appeals Board

Janice B. Askin, Judge  
Employees' Compensation Appeals Board

Valerie D. Evans-Harrell, Alternate Judge  
Employees' Compensation Appeals Board

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<sup>38</sup> *C.D., id*

<sup>39</sup> *Id.*